

AUG 12 1998

Before the  
**THE FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )  
 )  
 Competition in Markets for the ) CS Docket 98-102  
 Delivery of Video Programming )

**COMMENTS  
 OF ANTILLES WIRELESS CABLE TV COMPANY**

Antilles Wireless Cable TV Company ("Antilles Wireless") hereby submits its comments in response to the Commission's above-referenced inquiry. Antilles Wireless is a small, wireless cable operator licensed to provide MMDS service in the Virgin Islands. The company acquired the right to operate by placing the winning bid in the MMDS auction held in 1996. It has paid the U.S. Treasury all of the \$770,000 that it bid for the BTA rights in anticipation of competing vigorously in the badly undeserved video market in the Virgin Islands. Unfortunately, the promise of MMDS as a competitive alternative to wired cable has been effectively thwarted by a combination of factors, many of which are remediable, by the Commission.

1. The Inability to Acquire a Full Complement of Channels. When the Commission authorized MMDS as a service with the potential to compete with cable Television in 1983, it anticipated that a wireless cable operator could assemble a complement of 33 channels – eleven MMDS channels, twenty ITFS channels, and old MDS channels 1 and 2/2A. Even in an analog mode, thirty-three channels would provide the minimum level of programming options necessary to compete with cable television systems which typically have at least thirty channels and often as many as fifty. (The hard-wire cable system in the Virgin Islands has 65 channels.) In the Virgin Islands, however, and in many other areas as well, it has proven impossible to assemble this threshold mass of channels because of the timing of the ITFS windows.

The last ITFS filing window opened in the fall of 1995, just before the auction for MMDS BTAs began. The auction was then held and BTA winners were in a position to start implementing their business plans by the summer or fall of 1996. This process included optimizing transmitter site locations so as to best serve the video marketplace. Almost always, site selection based on serving the general public would be unrelated to the site choices made by ITFS applicants or licensees who were only thinking of serving their own educational needs at the time their applications were filed. This translates into an urgent need to permit major modifications of ITFS transmitter sites so that the sites can be co-located with and made compatible with the MMDS operations into which

they can now be integrated. At the same time, in some markets such as the Virgin Islands, there are ITFS channels which are not applied for (or were applied for by defective applications which were subsequently dismissed) and therefore remain entirely vacant. The result in our case is that only 15 of the originally contemplated 33 channels are currently available for video use.<sup>1</sup> Sixteen remain vacant and unused, a tragedy in a market like the Virgin Islands which has only a handful of off-air video sources and which is subject to frequent hurricane -related outages on its wired cable system. The channel 1 frequency is, of course, separate from the other frequencies and difficult to integrate into the video offering, and in non-top 50 markets, only channel 2A is available to BTA licensees, a 4 MHz rump channel insufficient for normal video operations.

A fifteen-channel system is patently uncompetitive against any kind of normal wired cable offering, a naked fact that the marketplace has all too clearly confirmed. The Antilles Wireless system has suffered a hemorrhage of cancellations in recent months as customers have expressed growing intolerance for its continued inability to deliver desired programming. Specifically, from April 1 through June 30, 1998, fully 50% of the customers who terminated service did so as a direct result of 1) our inability to deliver sufficient channels and 2) the resulting inability to deliver the programming the customers want, e.g., The Weather Channel, TBN, CNNFI, Nickelodeon, The Family Channel, Disney Channel, Cartoon Network, MTV, VH1). Customers do respond positively to the attentive customer care program, which Antilles Wireless maintains, but no amount of "customer care" can compensate for a lack of pure channel capacity and programming.

In a kinder world, digitalization might be a means of alleviating the chronic shortage of programmable channels. Antilles Wireless has evaluated the digital option in very considerable detail. It turns out, though, that digitalization is only a realistic solution in market much larger than the Virgin Islands (102,000 pops). The costs of digitizing run to approximately \$3,000,000 for a 12 channel analog system. It is impossible to make a business case for that level of capital investment in a market where the potential subscriber base under the best of circumstances is insufficient ever to reach levels necessary to cover the investment.

While there has been much talk in the MMDS world about the advent of two-way uses of MMDS spectrum, Antilles Wireless continues to believe that there could be a viable competitive video use of these channels if the full complement of channels were effectively available to be used. Antilles Wireless is willing to compete in the market, but it cannot compete with the deck stacked against it by a lack of the basic channel complement. It is critical therefore that the Commission resolve the pending issues regarding the auctionability vel non of ITFS channels and get on with the licensing of these channels to educators and wireless operators. The present state of stasis works to the detriment of everyone but entrenched hard-wire cable interests. Moreover, the failure to open these channels to new applications or major mods is something of a breach of faith

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<sup>1</sup> The one ITFS channel group currently in use is operating pursuant to an STA.

with bidders who bid and paid large sums of money for BTAs in the expectation that the Commission would follow through on its conception of making MMDS competitive. Without access to the ITFS channels, the service cannot advance to a true competitive level.

Wireless cable is very probably the only prospective competitor to wired cable (other than direct-to-home satellite services, which in most areas cost too much for ordinary citizens to afford) in the foreseeable future in small markets. The only way to introduce competition into the marketplace as a realistic check to cable price increases and service deterioration is to foster wireless cable by making the channels available which were always intended for the service.

In this connection, it is worth stressing that the potential advent of two-way uses of MMDs and ITFS channels should not serve as an excuse for further delay in the opening of an ITFS window. The need for these channels has been pressing and urgent for more than two years and it has been nearly three years since the last window opened. One final window should permit the "colonization" of the MMDS/ITFS band to be completed. All the licenses can be issued at the desired locations, and then the process of sorting out two-way usage rights can begin. If all the licenses are issued and all the players are in place, the negotiation process necessary to permit two-way operations will be greatly facilitated. Leaving channels "open" would simply require the existing MMDS and ITFS licensees and operators to negotiate with an empty chair - always a difficult proposition.

2. Effective denial of programming. Smaller wireless cable operators like Antilles Wireless suffer from a serious lack of accessibility to programming. While the Cable Television Consumer Protection and Competition Act of 1992 theoretically outlawed discrimination by programmers in the offering of programming to wired and wireless video operators, the real world has yet to see the benefits of the law. Many of the favorable rates offered to video operators are only available to companies with a minimum of 250,000 subscribers. (The Act permits price discrimination where justified on economic grounds.) While the case for true cost-based justification for these rate differentials has never been made, the fact is that wireless cable systems cannot get access to the most popular programming at affordable rates. Moreover, rural cable operators can qualify for the volume discounts if they are members of NCTC - effectively forming a shared use group to qualify for the discount. However, the small wireless cable operator competing in the same market with the rural wired cable operator has no similar organization to join and is prevented from joining the NCTC. Thus, its cost to acquire the very same programming with the very same customer base would be significantly higher than its wired competitor's cost. That kind of differential is fatal to competition and is exactly what the 1992 Act was passed to prevent. In addition, wired cable operators qualify for promotional offerings such as a month of free service, which Antilles Wireless cannot match. Again, the playing field is heavily slanted in favor of the wired cable entity.

Even apart from the discriminatory pricing issues, programming costs have risen significantly (for example, ESPN has raised rates twice in a single year). These rate increases cannot be passed along to customers, so the margin for profit is reduced even further.

3. Home wiring issues. Although the Home Wiring rules were intended to make access to home wiring fairer for new entrants into the communications market, Antilles Wireless is continuing to experience problems in this regard. Often individual homeowners in a multiple dwelling unit desire our service, but the homeowners association feels that it is safer to go with the established wired cable system. The association therefore permits only a single operator into its building - usually the wired system. Individual consumers can of course express their disapproval to board management, but in the meantime they are denied access to our programming. In addition, the home wiring rules do not apply to hotels and the like which in resort areas like the Virgin Islands are major sources of video revenue. Hence there is no equality of access whatsoever to these key premises.

4. Excessive Licensing Fees. Antilles Wireless has pointed out in other contexts the gross unfairness and inappropriateness of the application fee assessed to MMDS operators for "covering license" applications. An MMDS covering license application is a simple one page document advising the Commission that construction of the facility has been completed in accordance with the construction permit (or conditional license, in present parlance). There is virtually no engineering or administrative work associated with the filing. For reasons, which have never been, clear, however, the Commission charges a fee of \$550 per channel. A typical four-channel filing therefore costs \$2200 simply to advise the Commission that construction has completed. Even worse, in a situation like the Virgin Islands where terrain considerations require numerous cellularized repeater stations, the costs can be enormous. For example, Antilles Wireless last year applied for authority to operate eleven channels at 5 different sites. If all sites were constructed and made operational at once, the covering license filing fee alone for these facilities would be \$30,550. In a small system where every dollar counts and programming is at a premium, these exorbitant and wholly unjustified filing fees become a heavy burden. They also competitively handicap the wireless operator because the hard wired company faces no similar FCC fee when it puts a new channel on the air.

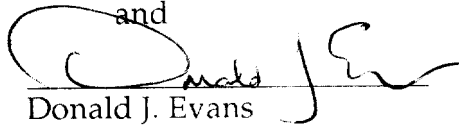
5. Conclusion. Antilles Wireless is a good example of the potential of wireless cable to be a competitor in the video market. When Hurricane Hugo knocked out the wired system, Antilles sprang forward to fill the video gap. It remains a presence stimulating promotions and no doubt retarding rate increases by the local cable company which is owned by the dominant local media conglomerate which holds interests in local telephone service, cellular, cable TV, two major newspapers, and telephone equipment. If Antilles Wireless is to survive, much less to thrive, the Commission must act to make effectively possible the promise of competitive service that MMDS has long held out.

Respectfully submitted,

ANTILLES WIRELESS CABLE TV COMPANY

By: Cara Lyn Greco  
President

and

A handwritten signature in black ink, appearing to read "Donald J. Evans", is written over a horizontal line.

Donald J. Evans  
Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Avenue, N.W.  
Suite 750 West  
Washington, D.C. 20005-3935  
(202) 371-9500

ITS ATTORNEY

August 12, 1998